



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Derek A. Miller : ORDER
Tax Registry No. 916228 : OF
: DISMISSAL
-----X

Police Officer Derek A. Miller, Tax Registry No. 916228, Shield No.14900, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 83855/08, 83936/08 and 83964/08 as set forth on form P.D. 468-121, dated February 15, 2008, April 1, 2008 and April 17, 2008, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Derek A. Miller from the Police Service of the City of New York.


RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: 0001 Hrs., May 22, 2008



POLICE DEPARTMENT

May 16, 2008

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In the Matter of the Charges and Specifications : Case No.83855/08
83936/08
- against - : 83964/08
Police Officer Derek A. Miller :
Tax Registry No. 916228 :
43 Precinct :
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At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department:

Debbie Coleman, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent:

Eric Sanders, Esq.
Jeffrey L. Goldberg, P.C.
2001 Marcus Avenue
Lake Success, NY 11042

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on May 5, 2008 charged with the following:

Disciplinary Case No. 83855/08

1. Said Police Officer Derek Miller, assigned to the 43rd Precinct, on or about February 14, 2008, having been directed by New York City Police Deputy Inspector Jeffrey Mishula, to comply with the directives of the Counseling Unit to participate in an in patient counseling program, did fail and neglect to comply with said order.

PG 203-3 Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

Disciplinary Case No. 83936/08

1. Said Police Officer Derek Miller, assigned to the 43rd Precinct, on or about March 17, 2008, having been directed by New York City Police Lieutenant Victor Pataffi, to report to the Counseling Services Unit, did fail and neglect to comply with said order.

PG 203-03 Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

2. Said Police Officer Derek Miller, assigned to the 43rd Precinct, on or about March 17, 2008, scheduled to perform a tour of 0900 x 1735 hours, was absent from said assignment without permission or authority. *(As Amended)*

PG 203-05 Page 1, Paragraphs 1 and 2 – PERFORMANCE ON DUTY-
GENERAL REGULATIONS

Disciplinary Case No. 83964/08

1. Said Police Officer Derek Miller, assigned to the 43rd Precinct, on or about April 16, 2008, having been directed by New York City Police Captain James Donnelly, to comply with the directives of the Counseling Unit to participate in any in patient counseling program, did fail and neglect to comply with said order.

PG-203-03 Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

The Department was represented by Debbie Coleman, Esq. Department Advocate's Office and the Respondent was represented by Eric Sanders, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject

charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Deputy Inspector Jeffrey Mishula, Lieutenant Victor Pataffi, Captain Drew Kastner and Sergeant Daniel Sweeney as witnesses.

Deputy Inspector Jeffrey Mishula

Mishula is a 27-year member of the Department currently assigned as the Commanding Officer of the Medical Division. He testified that his duties include administrative matters, special projects and any other function related to the Medical Division. He stated that on February 14, 2008 he was either working from 10:00 a.m. to 6:00 p.m., or 11:00 a.m. to 7:00 p.m. at the Medical Division located in Lefrak City. He met the Respondent on that date because he was referred to the Medical Division by the Counseling Service Unit (CSU). He explained that the Respondent was sent to the Medical Division because Sergeant Sweeney from CSU said the Respondent was noncompliant with their directives. The Respondent was sent to the Medical Division to see if they could get him to comply with the CSU directives. He further explained that during a deposition held at the Corporation Counsel held on February 12, 2008, the Respondent admitted to having a relapse. Based on that relapse he was subsequently

directed to report to CSU and Mishula believed Sweeney spoke with or interviewed the Respondent.

Mishula testified that he spoke to the Respondent who was accompanied by a Police Benevolent Association delegate from the 44 Precinct. He stated that he listened to the Respondent. He tried to convince the Respondent to abide by the directives of CSU which was recommending that he attend an inpatient treatment facility. He said that he spoke with the Respondent's delegate as well as his own Integrity Control Officer. He explained that the last thing he wanted to do that day was suspend the Respondent. However, when the Respondent refused to acquiesce, he suspended the Respondent from duty at approximately 4:00 p.m.

On April 16, 2008, Mishula stated that the Respondent was just removed from a suspension effective March 17, 2008 which he [Mishula] was not involved in. The Respondent reported to CSU and was then directed to report to the Medical Division because he refused to cooperate with the directives of CSU again. Mishula said he learned that the Respondent left CSU stating that he was going to "put in his papers."¹ Mishula stated that he spoke to the Respondent at the Medical Division in the presence of Captain James Donnelly, and Lieutenant Michael Dorn. He tried to convince the Respondent that it was in his best interest to comply with Sweeney's order to report to counseling. He explained that the Respondent said he would not and could not comply. He mentioned that he had a dog and a sick mother to take care of. Mishula said that he told him that he could make arrangements to handle his affairs by placing his dog in a kennel and having his partner check on his mother. The Respondent refused. Mishula testified that he was present when Donnelly suspended the Respondent from duty.

¹ "Put in his papers" is a term of art used by members of the service to refer to filing for retirement.

On cross-examination, Mishula acknowledged that he learned from Sergeant Sweeney that it was during a deposition in a federal lawsuit that the Respondent admitted to alcohol use. Mishula admitted that he had knowledge that Sweeney was a named defendant in the federal lawsuit. He recalled being told that the Respondent said in the deposition that he used alcohol and had drinks. He stated that Sweeney did not tell him the exact words used. He also recalled that Sweeney used the term, "relapse" in describing the Respondent. Mishula said he was not aware whether the Respondent had one drink or more than one drink. He was aware that the Respondent had previously completed a 28-day inpatient treatment program and that he had extensive outpatient treatment as well. Mishula testified that he does not work for CSU and is unfamiliar with the details of their programs.

Mishula acknowledged that when he spoke to the Respondent, the Respondent made allegations that he had been treated unfairly. Mishula stated that he made the decision to contact the Department's Legal Bureau before he took any action against the Respondent. He left the Respondent in a room at the Medical Division while he conferred with the Legal Bureau. He spoke with Assistant Deputy Commissioner Zoland who advised him that three police officers made admissions about alcohol use including the Respondent. He also learned that the other two police officers went to a 28-day inpatient treatment facility but the Respondent refused to go. Mishula said that he was not aware whether there were actually four police officers who admitted to alcohol use. He was also unaware whether two of the police officers who filed federal claims based on race were sent to inpatient treatment, while two officers who did not make such claims were sent to outpatient treatment.

Mishula said that on February 14, 2008, the Respondent advised him that he had a federal lawsuit against the Department and that he had to do what he had to do. He also advised him that he was not going to comply with the directives from CSU. Mishula stated that the Respondent at least intimated to him that he felt that he was being retaliated against. He said he had the same thought and that is why he contacted the Legal Bureau. He stated that the Respondent also mentioned that he was filing a complaint of retaliation with the Internal Affairs Bureau. Mishula said that he did not know if the Respondent actually filed the complaint.

As to the April 16, 2008 incident at the Medical Division, Mishula said he had a similar conversation with the Respondent as the one he had with him in February regarding the need for him to cooperate with CSU's directives. He said the Respondent never mentioned retaliation on that date.

Lieutenant Victor Pataffi

Pataffi is a 26-year member of the Department currently assigned as the Executive Officer of the Personnel Orders Section. He has been assigned to that unit for 19 years. Pataffi said that he is also the Integrity Control Officer of his unit. His duties include handling all uniformed members of the service coming off of suspension and being placed on modified assignment; all members being restored from modified assignment to full duty; all members transferred to restricted duty as well as transactions for members of the service in undercover capacities.

On March 17, 2008, Pataffi stated that he was working a 9:07 a.m. to 5:40 p.m. tour of duty at the Personnel Orders Section. He met with the Respondent at approximately 12:15 p.m. on that date because his duty status was being changed from

suspension to modified assignment. He explained that he had to advise the Respondent of the guidelines of modified assignment, to issue him a no firearms Department identification card and to advise him of any change in his assignment. He further explained that on the authority of the Department Advocate's Office, the Respondent was restored to duty on that date effective 9:00 a.m. March 17, 2008.

Pataffi testified that he ordered the Respondent to report to CSU after initially reporting to the Early Intervention Unit. He stated that the Early Intervention Unit is located next door to the Personnel Order Section in One Police Plaza. He said CSU is located at 189 Montague Street in Brooklyn. He explained that he ordered the Respondent to report to CSU because it was part of the notification order he received by the authority of the Medical Division. Pataffi said he believed the Respondent understood his order and he did not have any questions. Pataffi said that he did not personally speak to anyone in the Medical Division, but his secretary, Basile, received the order for the Respondent to report to counseling.

At approximately 4:00 p.m. on March 17, 2008, Pataffi stated that a member of his staff contacted CSU to verify whether the Respondent had reported. The staff member was informed that the Respondent had not shown up. Pataffi said that the desk officer at the 43 Precinct Station House was contacted to see if the Respondent had reported there, but he had not. He stated that the station house was later contacted again to reach out to the Respondent at his residence, either by telephone or Department car to see if he was okay. Pataffi explained that there was concern for the well being of the Respondent. At approximately 5:00 p.m., when no one was able to reach the Respondent, Pataffi testified that his unit contacted the duty captain at Patrol Borough Bronx to commence possible search procedures because the Respondent was AWOL.

Pataffi said he later learned that the Respondent was located around 6:05 p.m. and he was suspended at approximately 7:00 p.m. Pataffi stated that the next time he saw the Respondent was when the Respondent was relieved from the March 17, 2008 suspension. He stated that on April 16, 2008, the Respondent was relieved from suspension and placed on modified assignment. He directed the Respondent to initially report to the Early Intervention Unit and then directly to CSU. He learned that the Respondent reported to CSU on that date.

During cross-examination, Pataffi stated that he gave the Respondent a verbal order to report to CSU. He also gave him directions and the telephone number to CSU. Pataffi denied that he recorded this verbal notification in a Department log. He explained that he always gives the member of the service a verbal notification when the member has to report for modified assignment processing to CSU. He further explained that he always asks the member if he understands the directive and the member always responds. "Yes."

Captain Drew Kastner

Kastner is a 22-year member of the Department currently assigned to the Yankee Stadium detail, a sub-unit of Patrol Borough Bronx. He has been assigned to that detail for the past six years and has been in the rank of captain for over five years. Kastner testified that in the rank of Captain, he also serves as a duty captain. As duty captain, his duties include patrolling the confines of Patrol Borough Bronx, responding to serious police emergencies, missing children, special category children, serious crimes and incidents involving police officers among other things.

On March 17, 2008, Kastner testified that he was working a tour from 3:00 p.m. to 11:00 p.m. as the Bronx Duty Captain. At approximately 6:00 p.m., he received a telephone call that the Respondent, assigned to the 43 Precinct was carried AWOL [Absent Without Leave]. Kastner stated that he responded to the 43 Precinct Station House and spoke to the desk officer. He was advised by Sergeant Milligan that the Respondent was AWOL who was notified of this by Lieutenant Pataffi of the Personnel Orders Section. Kastner said he went into the Commanding Officer's office and called Pataffi.

Kastner was advised by Pataffi that the Respondent came off of suspension that day. He was issued a new Department identification card which noted he was on modified assignment. Pataffi directed the Respondent to go to CSU located on Montague Street, but he never showed up and was considered missing or AWOL. Pataffi further noted that he was reporting this information to him as the Bronx Duty Captain so that he could locate the Respondent and find out what happened to him. Kastner said he believed the Respondent reported to Pataffi's office around 9:00 a.m. and had paperwork to complete. He recalled it was sometime around 10:30 a.m. or 11:00 a.m. that the Respondent left Pataffi's office.

Kastner testified that it was approximately 6:00 p.m. when he arrived at the 43 Precinct Station House. As he was conducting his investigation in the Commanding Officer's office, someone came in and advised him that the Respondent had been located at his residence which was in the confines of the [REDACTED] Precinct. Kastner called the patrol sergeant at the 44 Precinct and told him to bring the Respondent from his residence to the 44 Precinct Station House and he would meet them there. They arrived simultaneously.

Kastner said that he spoke with Deputy Inspector Chang of the Personnel Bureau. He believed she was the Commanding Officer. Chang informed him that she spoke to the Respondent via telephone and learned that he did not report to CSU as Pataffi instructed him to do. She said that the Respondent failed to follow a direct order from a supervisor and that he should be suspended by Kastner. Kastner said he proceeded to speak to the Respondent. He wanted to verify whether the Respondent failed to report to CSU as well as verify his identity. The Respondent showed him his Department identification card. Kastner said he put his arm around the Respondent's shoulder and asked him what the problem was. The Respondent told him that he was not reporting. Kastner said he tried to tell him to just report as ordered, but the Respondent was adamant in his refusal. Once he realized that the Respondent was not going to change his position Kastner told him, "If you are refusing to go, you are going to be suspended." Kastner said it was approximately 7:00 p.m. when he suspended the Respondent. Kastner said that was the first and only date that he dealt with the Respondent.

During cross-examination Kastner was asked how long the Respondent had been AWOL. He explained that the Responder's tour was from 9:00 a.m. to 5:30 p.m. Sometime around 12 noon, he was expected to report to CSU on Montague Street in Brooklyn, but he never showed up. Kastner stated that he never checked the sign in/sign out log at the Personnel Orders Section as part of his investigation. He explained that he relied on the information he received from Pataffi. Kastner said that the Respondent never told him why he did not want to report to CSU. Kastner said he did not know who Sergeant Sweeney was.

Sergeant Daniel Sweeney

Sweeney, a 21-year member of the Department, is currently assigned as Commanding Officer of CSU. He testified that he became familiar with the Respondent in 2004, when the Respondent attended part of the counseling program. According to Sweeney, during a federal deposition held at Corporation Counsel on February 12, 2008, it came to the attention of the Department that the Respondent "had been in relapse for previous alcohol dependence treatment." Sweeney was a named defendant in the federal lawsuit, and both he and Detective Suzanne Gimblet were present at the deposition. According to Sweeney, the Respondent stated in the deposition that he had resumed drinking alcohol and had consumed wine the night before. Based on these statements, Sweeney made the determination that the Respondent needed to report to CSU. Sweeney did not personally instruct the Respondent to report, but he probably reached out to the Respondent's command to have his post changed to CSU.

Sweeney testified that the Respondent received notification to report to CSU on February 14, 2008. The Respondent spoke with a CSU counselor that day. After the Respondent indicated that he wanted representation, a PBA delegate sat in with him. After the counselor's session with the Respondent, the counselor informed Sweeney that the Respondent admitted to drinking wine again. Sweeney then spoke with the Respondent himself. Sweeney explained to the Respondent that he (the Respondent) was unfit to carry his firearm because he was in relapse. Sweeney further explained to the Respondent that if he did not comply with CSU's recommendation to attend a 28-day inpatient treatment program, he could be suspended by the Medical Division. Because the Respondent replied that he would not go to treatment, Sweeney directed one of his staff to drive the Respondent to the Medical Division. The Respondent refused to be

transported without his delegate, and Sweeney allowed the delegate to drive with the Respondent. Sweeney learned that the Respondent was subsequently suspended from duty for his refusal to attend treatment.

On April 16, 2008, the Respondent returned to CSU at the referral of the Personnel Orders Section. On that day, a CSU counselor again offered the Respondent treatment. The counselor later told Sweeney that the Respondent refused the offer for treatment, said that he could do better than this job, and informed the counselor that he was going to resign. Sweeney then spoke with the Respondent himself. The Respondent told Sweeney, "I don't want to talk about this. I don't want to deal with this." When Sweeney's driver approached the Respondent to take the Respondent to the Medical Division, the Respondent told the driver that he was going to resign. The Respondent then walked out without instruction or signing out. Sweeney later learned that the Respondent arrived at the Pension Section a couple of hours later and put in his papers.

Sweeney testified that CSU is licensed by New York State. In January 2008, Sweeney also became licensed by the state as an individual. Sweeney did not take notes during his conversations with the Respondent. Sweeney explained that CSU conducted an evaluation of the Respondent in 2004 and determined that he suffered with [REDACTED] [REDACTED] which is a chronic disease. At that time, the Respondent underwent inpatient treatment and 12 weeks of follow-up treatment at CSU.

Sweeney explained that if it is brought to the Department's attention that a member of the service who has completed treatment for [REDACTED] has resumed drinking, the Department considers that member to be in relapse. Department policy dictates that members of the service in relapse receive treatment. The Respondent did not undergo a new evaluation in 2008. Sweeney stated that the Respondent was on full duty

status at the time of the deposition, which means that the Respondent was able to carry a firearm.

On cross-examination, Sweeney testified that as a Certified Alcohol and Substance Abuse Counselor (CASAC), he is not required to take notes at every meeting with a patient. According to Sweeney, each treatment facility has its own policies regarding note-taking. Prior to 2008, Sweeney was only a CASAC trainer. He received his certification only after 18 lawsuits were filed against him. Sweeney testified that CSU has always been an Employee Assistance Unit, but there was an exception for a number of years due to miscommunication between CSU and the state. CSU was officially acknowledged by the state in 2004.

Sweeney testified that he did not take notes during the Respondent's February 12, 2008 deposition. Nor has he had the opportunity since that day to review the Respondent's deposition testimony. According to Sweeney, he was "pretty much" paying attention to each and every word that the Respondent said during the deposition. Sweeney was not distracted by anything in the room, but he was doing a crossword puzzle while he listened to the Respondent speak. Sweeney testified that he could not recall what Gimblet was doing during the deposition, but she may have been crocheting.

Sweeney testified that the Respondent was not referred to CSU for a relapse prior to the deposition. Sweeney could not recall which CSU counselor the Respondent spoke with on February 14, 2008. According to Sweeney, the counselor could have been John Mazzella. Mazzella does not have CASAC certification but is currently working towards it. Sweeney explained that the Respondent was not offered outpatient treatment since patients who have undergone inpatient treatment in the past are typically not sent to a lower level of treatment for a relapse. Exceptions have been made to this rule, however.

in cases where "people can illustrate verifiable need for another type of treatment or have had a period of time [since] their last verified drink." Sweeney has referred individuals for outpatient treatment who were previously treated inpatient. Sweeney did not recall the Respondent stating on April 16, 2008 that he (the Respondent) thought he was being treated unfairly.

On redirect examination, Sweeney testified that he thinks the Respondent asked for outpatient treatment. According to Sweeney, it was explained to the Respondent that he was not eligible for outpatient treatment in the absence of extenuating circumstances that would be verified by speaking with family members. Sweeney stated that the Respondent never indicated extenuating circumstances and did not want his family to be spoken with.

Upon questioning by the Court, Sweeney testified that members of the service who complete the 28-day inpatient program must also complete a 12-week program at CSU before being deemed medically suited to carry a firearm. These members are informed that they will receive further treatment if it ever comes to the Department's attention that they have consumed alcohol again.

On recross-examination, Sweeney testified that the decision to refer someone to inpatient or outpatient treatment is not based on a Department policy, but is rather a clinical decision.

Upon further questioning by the Court, Sweeney testified that he did not remember the Respondent stating during the federal deposition how many drinks he had consumed. Sweeney reiterated that the Respondent did state that he had consumed wine the night before. The Respondent did not use the word "relapse." Relapse is a word that Sweeney would have used as a counselor. Sweeney did not recall the Respondent raising

any family concerns or situations at home to justify his request for outpatient treatment. Sweeney explained that outpatient treatment requires a patient to attend, while off duty, clinical treatment three days a week and a 12-step group on the other four days of the week for a period of 16 weeks. Once a week, while on duty, patients in outpatient treatment report to CSU for a group meeting.

The Respondent's Case

The Respondent testified in his own behalf.

Police Officer Derek Miller

The Respondent, an almost 13-year member of the Department assigned to the 43 Precinct is currently on suspension. He testified that the first time he was referred to CSU was as a result of a landlord-tenant dispute. He explained that his landlord was a former Police Department employee who made an allegation against him that he drank heavily. Based on this allegation, the Respondent was referred to CSU in October 2004 and received Department Charges and Specifications. The Respondent stated that he had a Department trial on the charges in 2005 and was found Not Guilty of all charges.

As a result to the Department trial where he was cleared of all charges, the Respondent stated that he filed a lawsuit against the Department. Named in the lawsuit were counselors from CSU including Sergeant Daniel Sweeney. He said that after being found Not Guilty of all charges he was never taken out of CSU's program and had to complete it.

The Respondent testified that he was deposed in his federal lawsuit filed against the City of New York on February 12, 2008 by a Corporation Counsel attorney named

Eric Eichenholtz. He said that Sweeney was present in the room as he testified along with a Detective Suzanne Gimblet. The deposition lasted approximately one and a half hours. The Respondent stated that approximately thirty minutes after the deposition, he was perusing the Roll Call notifications at his command and found out that he was going to be notified to report to CSU. He explained that the notification did not state who gave the notification, it only mentioned that he had to see a Detective Christine Carlozzi. He noted that Carlozzi was another CSU personnel member named in his federal lawsuit. The Respondent said that he received his actual notification to report to CSU on February 13, 2008.

Prior to receiving that February 2008 notification to report to CSU, the Respondent stated that his last contact with CSU was in early 2007 when he received a notice to attend a meeting. He explained that he was never informed about when he would actually complete the CSU program. He said he was never granted access to his records to determine his program completion date. He was also told that his records disappeared so his completion date with the CSU program could not be ascertained. The Respondent said that based on his knowledge of the CSU monitoring program, the program lasts two years. He stated that in 2008, he believed he had completed the CSU program.

The Respondent testified that his notification ordered him to report to CSU on February 14, 2008. He stated that he arrived early in the morning between 8:00 a.m. and 10:00 a.m. with a PBA delegate. He initially spoke with Police Officer John Mazzella who informed him that he was there because of statements he made during his deposition. The Respondent told Mazzella that he [Mazzella] did not know what he said during his deposition because he was not present. Mazzella asked him why he was referred to CSU

the first time and the Respondent told him to refer to his records. The Respondent was asked why he engaged in this type of discourse with Mazzella and he stated that Mazzella was not at the deposition. He said that Mazzella was relying on hearsay rather than conducting "caged questions." He explained, "Those are questions that a counsel[or] must ask a person to determine whether or not they are alcohol dependent or an alcohol abuser because there are several levels of alcoholism." The Respondent stated that he learned this information from research he did online using the computer.

The Respondent said that Mazzella never did any evaluation of him. He said that Mazzella never took any notes while talking to him and the conversation lasted five or ten minutes in a counseling room. Mazzella then left the room for ten to fifteen minutes. He and his delegate were then escorted by Mazzella to an adjacent counseling room where Sweeney was present. Sweeney told him that he had made statements at his deposition that he had been drinking two to four times a week. The Respondent said he told Sweeney that those statements were "outright lies." The Respondent said that he heard Sweeney testify at this proceeding about his drinking a glass of wine and he denied having that conversation with Sweeney.

The Respondent stated that Sweeney insisted that he do inpatient treatment. He asked for outpatient treatment and Sweeney told him that outpatient treatment was "out of the question." Sweeney never explained why outpatient treatment was not an option and the only reason he gave for recommending inpatient treatment was the statements made by the Respondent at the deposition. The Respondent said that at no time did Sweeney ever use the term, "relapse" when speaking to him.

Sometime after speaking with Sweeney, the Respondent said he had to report to the Medical Division to speak with Deputy Inspector Mishula who would offer him

treatment. The Respondent advised Mishula, in the presence of Lieutenant Dorn and his PBA delegate that he was ordered to CSU based on alleged statements he made in a deposition. He told Mishula that Sweeney was basing his assessment of him on a lie, i.e., that the Respondent was drinking alcohol two to four times a week, and that he would be reporting this to the Internal Affairs Bureau (IAB). He further told Mishula that he felt the action of Sweeney was retaliation because he was a defendant named in the lawsuit. The Respondent said he was asked to step out of the room for a few minutes while they conferred. He was brought back into the room and Mishula gave him the option to comply with the directives of CSU.

The Respondent testified that he told Mishula he was not going to inpatient treatment because it was only based on "alleged statements" he made at a deposition. Mishula informed him that if he did not comply with the directives of CSU, he would be suspended. The Respondent explained that he allowed himself to be suspended rather than subject himself to someone else's personal vendetta. The Respondent further explained that following his suspension, he notified IAB on February 17, 2008 that Sweeney referred him to CSU on the basis of a lie in retaliation for being named in a lawsuit. He stated that he received an IAB log number and that a Detective Mollinari of Group 12 was assigned to his case.

Following his 30-day suspension, the Respondent stated that he reported to the Personnel Orders Section on March 17, 2008. He met with Pataffi who changed his duty status from suspension to modified assignment. He stated that Pataffi told him that CSU requested to see him and that he was given directions to get to CSU. The Respondent said that he left the office and tried to contact several union officials to get representation to go with him to CSU. He explained that the first time he went to CSU things went so

badly, he wanted a witness to hear both sides of the story and to protect his rights.

The Respondent testified that he never reported to CSU on that date. He stated that he called and left a message for Mazzella to call him back. He explained that he had not arranged representation yet. When asked what his tour of duty was, the Respondent stated that Pataffi told him his tour started at 9:00 a.m. but he did not report at that time.

The Respondent said that he left the Personnel Orders Section around 12:15 p.m. He stayed in the vicinity of One Police Plaza until 3:00 p.m. trying to reach PBA delegates and attorneys. He eventually went home. He stated that no one from the Department tried to reach him before 5:00 p.m. at his residence. At approximately 6:00 p.m. he received a telephone call from a Police Officer Michael Mays of the 43 Precinct. Mays told him to call Sergeant Milligan, the desk officer at the command. The Respondent said he called Milligan who informed him that Pataffi was looking for him as well as a Deputy Inspector Chang from the Personnel Bureau.

The Respondent called Chang and advised her that he was trying to arrange a delegate and "lawyers" to go down to CSU and that he had called CSU and left a message for them to call him back. Chang advised him to stand by. The Respondent said a sergeant from the 44 Precinct came to his residence and told him that he had to report to the station house. When he arrived, he was met at the back door by Captain Kastner. Kastner asked him if he had been drinking and came close to him. They then went to the Commanding Officer's office. Kastner informed him that he was directed to comply with CSU directives. The Respondent informed him that he was not going to comply. The Respondent said Kastner made a telephone call and then suspended him. He was suspended for another thirty days.

The Respondent testified that on April 15 or 16, he reported to the Personnel Orders Section where Pataffi changed his duty status from suspended to modified. He said Pataffi told him that since he made a "ruckus" last time, he was specifically ordering him to CSU. The Respondent said that when he left Pataffi's office, he went next door to the Employee Management [Early Intervention] and then proceeded to CSU. He met with Sam Willis. Willis informed him that he was evaluated and that he was offering him inpatient treatment. The Respondent asked him who he was evaluated by and he stated that Willis said in sum and substance, "That's neither here nor there." He also asked Willis if outpatient treatment was out of the question and Willis responded, "Yes." The Respondent said he refused the inpatient treatment and Willis left the room.

The Respondent explained that he felt that he was being intimidated by Mazzella, Willis and Sweeney who were all counselors named in his lawsuit. He felt that they were all people who violated his rights the first time. He said that if he had a condition, an outside agency should see him and he said he was open for that. Eventually he met with Sweeney and a person named Mike Bahrenburg. Bahrenburg offered inpatient treatment on the basis of [REDACTED] which he had been diagnosed with. The Respondent said he refused the treatment and said he had more rights as a civilian and will resign. He then left the location before anyone could order him anywhere.

During cross-examination, the Respondent admitted that following his deposition on February 12, 2004, he had no discussions with Sweeney. He admitted that the next time he saw Sweeney was on February 14, 2008. The Respondent acknowledged that during his discussion with Counselor Mazzella, Mazzella informed him that he was being recommended for inpatient treatment based on statements he made during a deposition. The Respondent said that he told Mazzella he did not know what he said at his deposition

because he was not there. He said that he did not ask Mazzella what statements he made at his deposition because Mazzella would not be privy to that information. The Respondent, acknowledged, however, that he assumed Mazzella must have had discussions with Sweeney before speaking to him.

The Respondent acknowledged that when Mazzella recommended him for inpatient treatment, he did not request outpatient treatment. He explained that Mazzella did not ask him "caged questions" or the basic questions to determine if he had a problem at all so that inpatient or outpatient treatment was not relevant to him at that point. The Respondent denied that he had ever been assessed by CSU in 2004. He said that although the counselor, Mike Bahrenburg, asked him questions, Bahrenburg was not certified at that time and could not ask him those questions.

The Respondent denied that when he spoke to Sweeney on February 14, 2008 he told him that he "relapsed" with respect to his treatment. He also denied having any discussion with Sweeney on that date as to what he said during his deposition. The Respondent acknowledged that he had a discussion whereby Sweeney told him that he admitted in his deposition to drinking two to four times a week. The Respondent explained that he and Sweeney had that discussion, but he told Sweeney that statement was not true. He also told Sweeney "You were there, I was there, I am not repeating it," and he never answered Sweeney's statement to him about what he said at the deposition. The Respondent was questioned as to whether Sweeney confronted him with the statement he made at the deposition that he had a drink the day before the deposition. The Respondent replied, "I made the statement that I had one glass [of wine]." The Respondent said he made that statement at his deposition, but Sweeney never asked him about it. The Respondent acknowledged that the only statement Sweeney made to him at

CSU on February 14, 2008 was that he drank two to four times a week. The Respondent explained, "I recall the question being asked: When was the last time I had a drink, and I made a clarification at the deposition that: Let's make it clear, define drink and wine are two separate entities. I made that very, very clear. That's how I recall the question."

The Respondent denied that he admitted to drinking wine at any other time other than the day before the deposition. The Respondent said that Sweeney and Mazzella offered inpatient treatment and he declined the offer. He said they did not order him to inpatient treatment on February 14, 2008. He acknowledged that when he left CSU, he met with Mishula who ordered him to comply with CSU directives for treatment on February 14, 2008.

With respect to the March 17, 2008 date, the Respondent denied that Pataffi ordered him to report to CSU. He stated that Pataffi said, "They [CSU] requested to see me." He said Pataffi never told him that he had to report to CSU. When questioned as to what was his understanding of where he needed to go after leaving the Personnel Orders Section, the Respondent stated that CSU wanted to see him. He admitted that he did not have to report to the 43 Precinct Station House or that he was not supposed to go home at that time. He acknowledged that he was on paid duty on that date, but he said that he did not assume that he had a tour for that date.

The Respondent admitted that he was back to duty effective 9:00 a.m. on March 17, 2008, but he had no expectations of what his duty was. He also admitted that he did not think he was going to be performing a 24-hour duty. The Respondent stated that when he left Pataffi's office, he called CSU and left a message for them to call him back. He also called the PBA and the delegate's office to get representation. He explained that had he received representation, he would have reported to CSU as "asked" not "ordered."

He stated that he called CSU and fulfilled his obligation to them. He admitted, however, that CSU did not request him to call them but instead requested him to appear there.

The Respondent acknowledged that when he called CSU, he asked for Counselor Mazzella and was told he was in a counseling session. The Respondent said he then left a message for Mazzella to call him. He acknowledged that he knew where CSU was located and that he could have gone there and waited to see Counselor Mazzella.

The Respondent admitted that on February 14, 2008, he went to CSU with PBA representation. He testified that on March 17, 2008, despite calls to his attorney and the PBA, he could not get any representation. He said the PBA told him they were working on it. The Respondent testified that eventually the PBA called him back and told him that there were no delegates available. The PBA attorneys' office contacted him and advised him that he had assigned counsel and they would not send a PBA attorney for him. The Respondent said although he had a PBA delegate who was his friend accompany him on February 14, the same person was no longer a PBA delegate on March 17, 2008; and he did not confer with him to accompany him or to obtain any advice.

The Respondent said that he only asked for Mazzella because he dealt with him in the past. He stated that he saw no point in asking for any other counselor who he named in his federal lawsuit. He acknowledged that Pataffi never sent him to CSU to see a specific counselor.

The Respondent said that he did not receive any telephone call from the Department on March 17, 2008 either on his cell phone or at home in an official capacity. He stated that a friend of his from the command called him on his cell phone while he was at home and told him to call the desk sergeant. The Respondent said that if his tour

was from 9:00 a.m. to 5:35 p.m. on March 17, 2008, he had not reported to the 43 Precinct Station House, CSU or One Police Plaza for duty on that date. He admitted that the next time he reported to any Department facility was around 7:00 p.m. when he reported to the 44 Precinct Station House to meet Duty Captain Kastner.

The Respondent testified that following his suspension by Kastner on March 17, 2008, when he reported to Pataffi on April 16, 2008, Pataffi "ordered" him to report to CSU that time. He stated that on March 17, 2008, the prior occasion, Pataffi "requested" that he go to CSU. This time Pataffi said, "I am ordering you to go to the Counseling Service Unit." The Respondent said that he did not report to CSU with representation on April 16, 2006 because he was "wired." He explained that he did not attempt to get representation because he was going to tape record the conversation and that was "sufficient for me. The entire conversation was taped." He further explained that he purchased the tape recorder for the "occasion."

The Respondent said on April 16, he spoke with Counselor Sam Willis who offered him inpatient treatment. He told him that he had been evaluated and the Respondent informed Willis that he had never been evaluated. The Respondent explained that in 2004, he had never been given a diagnosis at the inpatient facility. He further explained that he requested his medical records but never received them. He said the only person who ever told him about his diagnosis was his outside counsel who advised him that his diagnosis was [REDACTED] and he did not agree with the diagnosis.

The Respondent said that on April 16, 2008 after speaking with Willis, Bahrenburg told him that he was suffering from [REDACTED]. The Respondent retorted, "Substance abuse is a lot lesser form of alcohol dependency [A]lcohol

dependency. That's the highest form of alcoholism." The Respondent stated that he could not be [REDACTED] and accomplish his degree at the top of his class. He stated that the only reason he asked Willis for outpatient treatment was to get him on tape denying it. He stated that had Willis offered him the outpatient treatment, "Whether or not I would have gone or not, I would have crossed that bridge when I got there."

The Respondent admitted that both Willis and Bahrenburg offered him inpatient treatment and he refused. He denied that he was post changed to the Medical Division. He stated that he left CSU before he learned about reporting to the Medical Division. However, the Respondent acknowledged that he had a conversation with Sweeney who told him to wait for a driver who would take him to the Medical Division. The Respondent then admitted that when the driver arrived and asked him if he was ready to go to the Medical Division, he refused and left CSU. The Respondent said that the next place he went was to the Pension Section. He said he was notified while there to contact the Medical Division.

The Respondent contacted the Medical Division and spoke to Donnelly. He later reported to the Medical Division where he saw Donnelly. The Respondent said he had a conversation with Donnelly who was a gentleman. After having been through the process three times he understood from Donnelly that if he did not comply with the inpatient treatment program offered by CSU he would be suspended. The Respondent said he was suspended.

The Respondent testified that he understood that he was part of a paramilitary organization and that the Patrol Guide requires him to comply with lawful orders. He said that if an order is unlawful, he is not obligated to follow it. When asked whether he makes the determination whether an order is lawful, he responded. "I think that's pretty

much –for me that was pretty much common sense... To me it's fruit of the poison tree. If the process to get to that order is unlawful, then to me the order, itself becomes unlawful." When questioned as to whether he conferred with a superior as to whether the order was unlawful he stated, "I determined based upon the process for me, it is unlawful..."

The Respondent testified that, being ordered to inpatient treatment put his life in danger similar to a Captain telling him to jump off a bridge. When told that being told to jump off a bridge is an unlawful order because it put his life in danger, he explained that there was no difference between the Captain's order and him being placed in an inpatient facility. He said that he could be in the facility with people with problems and people who do not like police officers and therefore his life would be in danger and there is no distinction between the Captain's order and the inpatient treatment.

The Respondent was asked whether he tried to consult with someone in the Employee Management Division to determine if the order to go to inpatient treatment was unlawful. He stated that he did not need to. He explained that a police officer can determine for himself or herself whether an order is lawful or not. The Respondent was asked whether he would arrest a person he was ordered to arrest even if he felt that the arrest was not warranted. The Respondent replied that he was ordered to make an unlawful arrest by a lieutenant. He stated that he made the arrest but he later "got the man out."

FINDINGS AND ANALYSIS

Disciplinary Case No. 83855/08

The Respondent stands charged herein with failing to comply with a directive from Deputy Inspector Jeffrey Mishula to comply with the directives of CSU to

participate in an inpatient counseling program. The Respondent is found Guilty.

Testimony at trial established that the Respondent was sent to the Medical Division to see Mishula following a visit to CSU where he refused to cooperate with the treatment program. Mishula stated that he listened to the Respondent who was accompanied by a PBA delegate. He tried to persuade him to follow the directives of CSU which was for him to attend an inpatient treatment facility but the Respondent refused to comply with the CSU directives.

Mishula testified that he learned from Sweeney that the Respondent admitted during a federal deposition that he used alcohol and had drinks. He recalled that Sweeney used the term, "relapse" when he referred to the Respondent. Mishula stated that he knew that the Respondent had previously completed a 28-day inpatient treatment program and had extensive outpatient treatment also. Mishula testified that the Respondent intimated that this order to comply with CSU was in retaliation to a federal lawsuit he had filed. Mishula said he looked into this allegation made by the Respondent before he took any action. He learned from contact with the Department's Legal Bureau that other members of the service also made admissions to alcohol use during their federal depositions, but unlike the Respondent, the other members of the service reported to inpatient treatment. Based on what he learned, the Respondent's counseling history and the Respondent's continued refusal to cooperate with CSU's directives, Mishula suspended the Respondent. The Respondent acknowledged during cross-examination that he did, in fact, refuse to comply with Mishula's order to cooperate with CSU's directives.

Accordingly, I find the Respondent Guilty of Specification No. 1

Disciplinary Case No.83936/08
Specification Nos. 1 and 2

The Respondent is charged with failing to comply with an order from Pataffi directing him to report to CSU on March 17, 2008. The Respondent is also charged with being absent from his assignment on that date without permission or authority. The Respondent is found Guilty as charged. Pataffi testified that when the Respondent reported to the Personnel Orders Section on March 17, 2008 around 12:15 p.m., he changed his duty status from suspension to modified assignment. He also testified that he ordered the Respondent to report to the Early Intervention Unit and then to CSU. He advised the Respondent that he was restored to duty effective 9:00 a.m. on the morning of March 17, 2008.

The Respondent testified that Pataffi never directed him to report to CSU. He stated that Pataffi only said that CSU "requested to see me." When questioned during cross-examination as to what he thought his tour and assignment was for March 17, 2008, the Respondent replied, "They requested to see me at the Counseling Service Unit." The Respondent said he understood that he had been restored to paid duty that date, but that he was not given a specific tour. The Respondent argued that he spent almost three hours trying to get either a PBA delegate or attorney to go with him to CSU to no avail. Since he was unable to get a witness to go with him, he called CSU and left a message for someone to call him back and he went home without ever reporting to CSU.

The Respondent seemed to spend an inordinate amount of time quibbling over semantics. He understood that he needed to go to CSU on March 17, 2008, but he did not report there. Although Pataffi told him where to go after Early Intervention and supplied him with directions, he thought he could simply make a telephone call to CSU and leave a message. It is clear from the testimony of Pataffi that the Respondent understood where

he was supposed to report to on March 17, 2008 and he chose not to report to CSU.

Rather, the Respondent said Pataffi told him that CSU simply wanted to see him.

The Respondent, an almost 13-year member of the Department understands what it means to receive a directive from a supervisor. When Pataffi told him to report to Early Intervention and then to CSU, it was not an option he could choose to comply with. He understood that he is a member of the service being paid for the day and to go home before completing Pataffi's directives was a clear violation of an order. It is a well-established principle in Administrative Law that an employee covered by a collective bargaining agreement governed by a grievance mechanism is required to obey a work order and pursue a grievance remedy at a later time. Ferreri v. New York State Thruway Authority, 477 NYS2d 616(1984). It has come to be known as the "work now, grieve later" rule, Ferreri at 617, or "obey now, grieve later" rule. This rule holds true even where a person believes the order may violate some agreement. The requirement to obey orders is of the utmost importance, particularly in quasi-military organizations such as the Police Department where adherence to law and order is paramount.

Exceptions to the "obey now, grieve later" rule apply where it is clear that the order is beyond the powers of management to make such an order, or where compliance with the order would present a threat to the health or safety of the employee. Ferreri at 617. Another exception would be where the order violates a State or Federal Law. Alper v. Gaffney, 422 NYS2d 744 [Second Dept.] (1979). In this instance, given the fact that the Police Department is a paramilitary organization, it is within the Department's managerial prerogative to send uniformed members of the service to treatment with CSU. The fact that uniformed members of the service carry firearms creates this managerial prerogative. The interest in protecting public safety far outweighs the right of the

Respondent to refuse to comply with a treatment program recommended by the Department's CSU. Moreover, requiring the Respondent to report for inpatient treatment based on statements heard by a CSU superior by the Respondent regarding alcohol use required immediate attention. The Respondent understood that the order went out immediately for him to report to CSU. Pataffi directed the Respondent to go to the Early Intervention Unit and CSU the same day he was restored to duty following his suspension. To require otherwise would substantially impair the functions of the Police Department. The Respondent testified that he failed to report to CSU on March 17, 2008.

Accordingly, I find the Respondent Guilty of Specification No. 1 in Disciplinary Case No.83936/08.

Patrol Guide 203-05 refers to the general requirements for members of the service in regard to performance of duties. It states in pertinent part:

1. *Perform all duties as directed by competent authority.*
2. *Remain on post until properly relieved, except for police necessity, personal necessity or meal period.*

The Respondent, once restored to duty by Pataffi had a responsibility to report to Early Intervention and to the CSU, he chose not to report to CSU. Patrol Guide 205-18 defines the investigatory process where a uniformed member of the service has an unauthorized absence from work. Patrol Guide 205-18 states in sum and substance that where a member of the service is absent without leave two hours before the beginning of a scheduled tour, a desk officer is to make telephone inquiries including but not limited to: the Command roll call, the Sick Desk supervisor, Court sign-in rooms and Member's residence. If the member is not contacted four hours after the commencement of the tour,

the desk officer is to notify the Commanding Officer/duty captain, Borough Command/counterpart among others.

In this instance, Pataffi testified that sometime around 4:00 p.m. on March 17, 2008, a member of his staff contacted CSU to verify whether the Respondent had reported there. The Respondent had not reported. Attempts were made to contact the Respondent at the 43 Precinct Station House as well as his residence to no avail. Pataffi said that when no one could locate the Respondent by 5:00 p.m., he contacted the duty captain in Patrol Borough Bronx to commence absent without leave procedures to locate the Respondent. Clearly Pataffi's actions were within the parameters of Patrol Guide 205-18. He met with the Respondent at approximately 12:15 pm. He estimated it would take him a few hours to go to Early Intervention and CSU. When 4:00 p.m. came and no one at CSU had seen the Respondent, he began taking affirmative steps to locate him which ended in contacting the duty captain. Pataffi was not a desk officer, but his actions were consistent with those procedures spelled out in the Patrol Guide.

The Respondent's failure to report to CSU as directed resulted in an investigation to locate him and the end result was that a sergeant from the [REDACTED] Precinct Station House, his residential precinct, eventually located him at his home and had to drive him to the 44 Precinct Station House to meet with the duty captain. The Respondent's action on March 17, 2008 to fail to report to CSU and instead go to his residence amounted to him being AWOL from his assignment, or at a minimum absent on that date without permission or authority.

Accordingly, I find the Respondent Guilty of Specification No. 2 in Disciplinary Case No.83936/08.

Disciplinary Case No. 83964/08

The Respondent stands charged herein with failing to comply with a directive on April 16, 2008 from New York City Police Captain James Donnelly to comply with the directives of CSU to participate in an inpatient counseling program. The Respondent is found Guilty as charged. On April 16, 2008, the Respondent had been removed from suspension which had been effective March 17, 2008. Mishula testified that although he had not been involved in restoring the Respondent to duty, he learned that the Respondent left CSU on April 16, 2008 stating that he was going to "put in his papers." Mishula spoke to the Respondent on that date at the Medical Division in the presence of Captain James Donnelly and Lieutenant Michael Dorn. After trying to convince the Respondent that it was in his best interest to comply with Sweeney's order to report to inpatient treatment, the Respondent refused. He gave reasons why he could not comply such as caring for his sick mother and tending to his dog. Mishula said he gave the Respondent options to address those concerns, but the Respondent refused the options. Mishula stated that he was present when Donnelly suspended the Respondent for failing to comply with CSU's treatment directive on that date.

The Respondent testified that prior to April 16, 2008, he learned from "outside counsel" that his diagnosis in 2004 was "substance abuse" and he did not agree with that diagnosis. He said that on April 16, 2008, Bahrenburg told him that he was "[REDACTED]" and he could not be "[REDACTED]" because he graduated at the top of his class in school. In essence, the Respondent seemed to dispute that he had any alcohol problem at all since he disagreed with either assessments of his condition. Yet the Respondent resisted any discussion of what he disclosed with respect to his consumption of alcoholic beverages in his deposition. He admitted to one glass of wine the night

before the deposition. But he denied two to four drinks a week. When questioned as to whether he admitted in his deposition to consuming two glasses of liquor a week, he refused to answer. But when pressed as to whether he consumed two glasses of wine per week he denied making that statement during his deposition.

The Respondent made several distinctions between “alcohol dependence,” “alcohol abuse” and “substance abuse” and distinctions between the drinking of wine as opposed to other liquors. Yet there was no expert testimony presented at this trial to establish that these distinctions were warranted. What is common knowledge is that many people who abuse alcohol deny that they have a problem and justify any use by making distinctions between their use and the use by others. What was also established in this trial through the testimony of Sweeney is that when a member of the service has had inpatient treatment for alcoholism and is found consuming alcohol again, they are generally sent back for inpatient treatment. Such was the case of the Respondent. Moreover, the Respondent did not want his family contacted by CSU. Yet Sweeney testified that the Respondent had previously been designated as alcohol dependent. This could have occurred in the 28-day program in 2004 and/or during the 12-week follow-up treatment program that the Department required the Respondent to attend. Just because the Respondent was cleared of Department charges in 2005 does not mean he did not have a clinical problem that required continued treatment in a CSU program.

With respect to the Respondent’s discussion at CSU on April 17, 2008 with Sweeney, a supervisor of the Police Department, the entire discussion was adversarial at best and combative at its worst. The Respondent admitted that when Sweeney, a police sergeant, questioned him about what he stated at his deposition with respect to alcohol use, he never answered him directly. He said words to the effect, ‘we were both there

and know what was said.' The Respondent chose not to answer questions because he did not mind if he had admissions from others who were being tape recorded by him, but he certainly did not want his own alcohol admissions on tape. Sweeney directed him to report to the Medical Division, but he left without complying. In essence, despite being offered inpatient treatment by Willis, Bahrenburg and Sweeney at CSU he refused it. He then acknowledged being ordered to comply with treatment at the Medical Division by Donnelly and he refused.

As was previously stated, the same rule in administrative law to "obey now, grieve later" applies to police officers such as the Respondent. The Police Department is a paramilitary organization where the need for discipline and compliance with orders is key to the performance of its operation.

Accordingly, I find the Respondent Guilty in Disciplinary Case No.83964/08.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on June 30, 1995. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of failing to comply with three, separate orders to enter an alcohol treatment program. In addition he was found Guilty of being absent from his assignment without permission or authority. The Respondent testified in a combative manner and this combativeness came across in the way he testified about his dealings with CSU counselors, particularly Sergeant Sweeney. He never revealed to

Sweeney when asked what he said at his deposition. The Respondent never admitted to either having a substance abuse or alcohol dependency problem while testifying, yet he never denied having a problem with alcohol either. He tried to make a distinction between wine and other liquors, but he was not forthcoming about what he disclosed in his deposition with regard to alcohol consumption.

The Respondent's noncompliance demonstrates his lack of suitability to remain a uniformed member of the service on many levels. When questioned about being ordered to make an arrest he did not agree with, the Respondent testified that he had that happen to him and he made the arrest, but he "got the man out" of custody. The Respondent was also questioned about whether he would have agreed to outpatient treatment if offered, and he said in sum and substance that he would have to "cross that bridge when I got there." He said the only reason he asked for outpatient treatment was to get the counselor on tape denying his request. Clearly compliance with any CSU directive was not on the Respondent's agenda. The Respondent claimed his orders to report to counseling were retaliation for his lawsuit filed against CSU counselors. Yet, the Respondent did not want to disclose what he said with regard to his own alcohol use during the deposition which was the basis for him receiving CSU directives. He also did not want Sweeney to contact his family to make inquiries.

The Respondent does not accept the authority of Department supervisors. Pataffi directed him to report to CSU and the Respondent interpreted that to mean "CSU wanted to see him" and he did not report to CSU and instead went home. Sweeney told the Respondent to wait for a ride to the Medical Division and the Respondent left and decided he no longer wanted to be a police officer and instead went to the Pension

Section. The Respondent's lack of compliance and unwillingness to come to terms with his possible problem with alcohol make him a danger not only to himself but to others.

The Police Department is an agency with high standards of discipline and decorum.

Police Officers are held to that high standard particularly when dealing with superiors.

The Respondent demonstrated that he no longer wants to meet this standard.

Accordingly, I recommend that the Respondent be DISMISSED from his position as a police officer with the New York City Police Department.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

APPROVED
MAY 22 2008
RAYMOND W. KELLY
POLICE COMMISSIONER

